

1972

c 121 The Municipal Amendment Act, 1972 (No. 1)

Ontario

© Queen's Printer for Ontario, 1972

Follow this and additional works at: http://digitalcommons.osgoode.yorku.ca/ontario_statutes

Bibliographic Citation

The Municipal Amendment Act, 1972 (No. 1), SO 1972, c 121

Repository Citation

Ontario (1972) "c 121 The Municipal Amendment Act, 1972 (No. 1)," *Ontario: Annual Statutes*: Vol. 1972, Article 123.

Available at: http://digitalcommons.osgoode.yorku.ca/ontario_statutes/vol1972/iss1/123

CHAPTER 121

An Act to amend The Municipal Act

Assented to June 30th, 1972
Session Prorogued December 15th, 1972

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 1 of *The Municipal Act*, being chapter 284 of the Revised Statutes of Ontario, 1970, is amended by adding thereto the following paragraph: s. 1, amended

20a. "regular election" means an election required to be held biennially under section 10 of *The Municipal Elections Act, 1972*, c. 95 1972, c. 95

2. Clause *h* of subsection 11 of section 14 of the said Act is amended by striking out "voters' lists" in the seventh line and inserting in lieu thereof "polling lists". s. 14 (11) (h), amended

3. Subsection 4 of section 17 of the said Act is repealed. s. 17 (4), repealed

4.—(1) Subsection 10 of section 24 of the said Act is amended by striking out "voters' list" in the first line and inserting in lieu thereof "polling list". s. 24 (10), amended

(2) Subsection 12 of the said section 24 is repealed and the following substituted therefor: s. 24 (12), re-enacted

(12) Except as provided in this section, the members of the Board of Management and any local board shall be elected by ballot and the election shall be conducted by the same officers and in the same manner as the elections of aldermen and councillors, and the provisions of *The Municipal Elections Act, 1972*, c. 95 respecting the time and manner of holding elections apply *mutatis mutandis* to such election. Election to be as municipal election
1972, c. 95

(3) Subsection 16 of the said section 24 is repealed and the following substituted therefor: s. 24 (16), re-enacted

Returning
officer

- (16) The secretary-treasurer shall be the returning officer of the area and in the case of an equality of votes for candidates for any office as a result of a recount or final addition the successful candidate shall be determined by lot conducted by the secretary-treasurer.

s. 24 (20),
re-enacted

- (4) Subsection 20 of the said section 24 is repealed and the following substituted therefor:

Duty of
returning
officer at
close of poll

- (20) At the close of the poll in each municipality, the returning officer thereof shall transmit to the returning officer of the area a scaled return showing the number of ballots cast for each of the candidates for election to the Board of Management and any local board and the returning officer of the area shall make up from the returns so received by him the total number of votes cast for each candidate and at noon on the Thursday following the day on which the polling is held publicly declare the result of the election, and he shall thereupon declare in writing over his signature the name of each person so elected and shall send by prepaid post a copy of such certificate to each candidate.

s. 28 (3),
re-enacted

5. Subsection 3 of section 28 of the said Act is repealed and the following substituted therefor:

Repeal of
by-law

- (3) A by-law for the purposes mentioned in clause *b* or *c* of subsection 1 shall not be repealed until at least two regular elections have been held under it and a by-law under subsection 2 shall not be repealed until at least three regular elections have been held under it.

s. 30 (4),
re-enacted

6. Subsection 4 of section 30 of the said Act is repealed and the following substituted therefor:

Repeal of
by-law

- (4) A by-law passed under section 29 or under subsection 2 or 3 of this section shall not be repealed until two regular elections have been held under it.

s. 32 (7),
re-enacted

7. Subsection 7 of section 32 of the said Act is repealed and the following substituted therefor:

Repeal of
by-law

- (7) A by-law passed under subsection 6 shall not be repealed until at least two regular elections have been held under it.

s. 34 (2, 3),
re-enacted

8. Subsections 2 and 3 of section 34 of the said Act are repealed and the following substituted therefor:

- (2) The number of municipal electors for a municipality shall be determined from the polling lists for an election in the municipality last revised and certified by the clerk under *The Municipal Elections Act, 1972*, but, in counting the names, the name of the same person shall not be counted more than once. Number of electors, how determined 1972, c. 95

- (3) It is the duty of the clerk of any such municipality having less than 10,000 municipal electors according to the polling lists last revised and certified by the clerk under *The Municipal Elections Act, 1972*, forthwith after revision of the lists to send by registered mail to the clerk of the county a certificate under his hand and the seal of the corporation, stating the total number of municipal electors for the municipality according to such lists who are to be counted under subsection 2 and to post up in his office a duplicate of such certificate. Certificate of clerk

- (3a) Where the right of a municipality in any county to a deputy reeve is contested, any municipal elector in the county may commence an action by writ of summons in the county court for the county for a declaration that the municipality is or is not entitled to a deputy reeve. Right to deputy reeve

- (3b) The provisions of sections 105 to 112 of *The Municipal Elections Act, 1972*, apply *mutatis mutandis* to an action brought under this section. Application of 1972, c. 95

9. Section 35 of the said Act, as amended by the Statutes of Ontario, 1971, chapter 98, section 4, is repealed and the following substituted therefor: s. 35, re-enacted

QUALIFICATIONS OF MEMBER OF COUNCIL

35. Every person is qualified to hold office as a member of a council of a local municipality, Qualification of candidates

(a) whose name is entered on the polling list of electors for election of members of the council; and

(b) who is not disqualified by this or any other Act from holding such office.

10.—(1) Clause *f* of subsection 1 of section 36 of the said Act is repealed and the following substituted therefor: s. 36 (1) (f), re-enacted

(f) a member of the Assembly or of the Senate or House of Commons of Canada.

s. 36 (1) (g),
amended

(2) Clause *g* of subsection 1 of the said section 36 is amended by striking out "the opening of the nomination meeting" in the ninth line and inserting in lieu thereof "the commencement of the period during which candidates may be nominated".

s. 36 (1) (h),
amended

(3) Clause *h* of subsection 1 of the said section 36 is amended by striking out "the opening of the nomination meeting" in the seventh line and inserting in lieu thereof "the commencement of the period during which candidates may be nominated".

s. 36 (1)
(*m, t, u, w*),
repealed

(4) Clauses *m, t, u* and *w* of subsection 1 of the said section 36 are repealed.

s. 36 (2, 5),
repealed

(5) Subsections 2 and 5 of the said section 36 are repealed.

ss. 38-46,
re-enacted,
ss. 47-183,
repealed

11. Part III, as amended by the Statutes of Ontario, 1971, chapter 98, section 4, and Parts IV and V of the said Act are repealed and the following substituted therefor:

PART III

VACANCIES

Vacancies

38. The seat of a member of council becomes vacant if,

- (a) he becomes disqualified from holding the office of a member of council under section 36;
- (b) he has neglected or refused to accept office or to make the prescribed declarations within the prescribed time;
- (c) he absents himself from the meetings of the council for three successive months without being authorized so to do by a resolution of the council entered upon its minutes;
- (d) he files his resignation with the clerk of the municipality as provided in subsection 6 of section 90 of *The Municipal Elections Act, 1972*, for the purpose of becoming a candidate for some other office;
- (e) he resigns from his office and his resignation is effective under section 40;
- (f) he is appointed to fill a vacancy in the office of mayor, reeve, deputy reeve or controller;
- (g) his office is declared vacant in any judicial proceedings; or

(h) he forfeits his office under this or any other Act.

39. No person may hold more than one office, election to which is governed by *The Municipal Elections Act, 1972*, whether in the same or in two or more municipalities and, if he is nominated for and his name appears on the ballots for more than one of such offices and he is elected to any of such offices, his election is void and the office is vacant. Holding more than one elective office prohibited 1972, c. 95
40. A member of a council, with the consent of the majority of the members present at a meeting, entered upon the minutes of it, may resign his office and his seat in the council which shall then be vacant, but he shall not vote on a motion as to his own resignation and his resignation may not be accepted and is not effective if it would reduce the number of the members of the council to less than a quorum. Resignation of member with consent of council
- 41.—(1) The warden of a county may resign his office by notice in writing filed with the county clerk and his office then becomes vacant. Resignation of warden
- (2) Where from any cause a vacancy occurs in the office of warden when the council is not in session, the clerk shall forthwith notify the members of the vacancy and, if required in writing so to do by a majority of them, he shall call a special meeting of the council to fill the vacancy. Vacancy in office of warden, how filled
42. Where the seat of a member of a council becomes vacant under section 38, the council shall forthwith declare the seat to be vacant. Duty of council to declare seat vacant
- 43.—(1) Any elector entitled to vote at the election of members of a council may commence an action by writ in the county or district court in the county or district in which the municipality is situate for a declaration that the office of a member of such council has become vacant in accordance with this Act. Action for declaration that seat vacant
- (2) No action shall be commenced under this section more than ninety days after the facts alleged to cause the vacancy in the council came to the knowledge of the person bringing such action. Time for bringing action
- (3) Where in an action under this section, the court finds that the office of a member of the council has become vacant, the court may order that the member be removed from office and declare that the office is vacant. Power of court

Application
of 1972, c. 95

- (4) The provisions of sections 105 to 112 of *The Municipal Elections Act, 1972*, apply *mutatis mutandis* to an action brought under this section.

Joining of
claims

- (5) A claim in an action under this section may be joined with a claim in an action under section 104 of *The Municipal Elections Act, 1972*, and such claims may be heard and disposed of in the same action.

APPOINTMENTS TO VACANCIES

Filling
vacancy by
appointment

- 44.—(1) Subject to section 45, where a vacancy occurs in the office of a member of the council of a local municipality, the council at a meeting called for that purpose shall appoint a person who has consented to accept the office if he is appointed to fill the vacancy and,

(a) in the case of the office of councillor or alderman, such person is a person qualified to hold office as a member of the council; and

(b) in the case of the office of mayor, reeve, deputy reeve or controller, such person is a member of the council on the date of his appointment.

Where vote to
be taken by
clerk

- (2) If more than one person is nominated for appointment to fill a vacancy under this section, a vote of the members of council shall be taken by the clerk at a regular meeting or at a special meeting called for the purpose.

Majority vote
required

- (3) A person nominated under this section who receives the votes of more than one-half the number of all members of council shall fill the vacancy for which the vote by council was held.

Procedure
where no
majority vote
obtained

- (4) Where a candidate for appointment under this section receiving the greatest number of votes cast does not receive more than one-half the votes of all members of council, the candidate who received the fewest number of votes shall be excluded from the voting and the vote shall be taken again by the clerk, and if necessary more than once, excluding in each successive vote the candidate who received the fewest number of votes in the preceding vote, until the candidate receiving the greatest number of votes has also received more than one-half the votes of the members of council present and voting.

- (5) Where the votes cast in a vote under this section are ^{Idem} equal for all the candidates,

- (a) if there are three or more candidates nominated or remaining, the clerk shall by lot select one such candidate to be excluded from the subsequent voting; or
- (b) if only two candidates remain the tie shall be broken and the vacancy shall be filled by the candidate selected by lot conducted by the clerk.

45.—(1) Subject to subsection 3, where a vacancy occurs ^{Filling vacancy by election} in the office of a member of the council of a local municipality, the council may by by-law require an election to be held to fill the vacancy and where the council passes such a by-law the clerk of the municipality shall hold a new election to fill the vacancy in accordance with section 90 of *The Municipal Elections Act, 1972*. ^{1972, c. 95}

- (2) Subject to subsection 3, where a direction is given in ^{Idem} any judicial proceedings to hold an election to fill a vacancy on a council, the clerk of the municipality shall hold a new election to fill the vacancy in accordance with section 90 of *The Municipal Elections Act, 1972*.

- (3) Where a vacancy occurs in the office of a member of ^{Vacancy after March 31st of election year} the council of a local municipality after the 31st day of March of an election year as defined in *The Municipal Elections Act, 1972*, the vacancy shall not be filled by a new election as provided in subsection 1 or 2 but the council may fill such vacancy in accordance with the provisions of section 44.

46. A person appointed or elected to an office under ^{Term of office} section 44 or 45 shall hold office for the remainder of the term of the person whose place he is appointed or elected to fill.

12. Subsections 2, 3, 4 and 5 of section 235 of the said Act ^{s. 235 (2), re-enacted, s. 235 (3-5), repealed} are repealed and the following substituted therefor:

- (2) Every clerk, treasurer, collector, engineer, commissioner of industries, clerk of works and street overseer or commissioner, before entering on the duties of his office, shall make and subscribe a declaration of office (Form 21), but every such person ^{Municipal officers}

appointed to two or more municipal offices may make one declaration of office as to all of them.

ss. 262-265,
re-enacted,
ss. 266-279,
repealed

13. Sections 262 to 279 of the said Act are repealed and the following substituted therefor:

Publication
of by-law that
requires the
assent of the
electors

262.—(1) Where a by-law requires the assent or is submitted to obtain the opinion of the electors, a copy of the proposed by-law or a statement of the question submitted, as the case may be, shall be published once a week for three successive weeks together with a notice signed by the clerk stating that the copy is a true copy of the proposed by-law or a correct statement of the question submitted, as the case may be, and in the case of a by-law, that, if the assent of the electors is obtained to it, it will be taken into consideration by the council after the expiration of two weeks after the result of the voting on the by-law has been declared.

Synopsis of
by-law may
be published

(2) Instead of publishing a copy of the proposed by-law, the council may publish a synopsis of it containing a concise statement of its purpose, the amount of the debt or liability to be created or the money to be raised by it, how the same is to be payable and the amount to be raised annually for the payment of the debt and the interest or instalments, if the debt is to be paid by instalments.

Time of
publication

(3) The first publication of a proposed by-law or of a synopsis thereof or of a proposed question under subsection 1 or 2 shall be made not later than one month prior to the election at which the by-law or question is to be submitted for the assent or opinion of the electors.

Municipal
Board may
order submis-
sion of by-law
or question at
other than
regular
election

(4) The Municipal Board may upon application by a municipality order that a by-law or question be submitted to the electors at an election other than a regular election and, subject to such orders and directions as the Municipal Board may give with respect to such election, the provisions of section 90 of *The Municipal Elections Act, 1972*, apply *mutatis mutandis*, as if such election were a new election.

1972, c. 95

By-laws,
questions, in
one notice

(5) Where more than one by-law or question is to be submitted at the same time, all of such by-laws and questions may be included in one notice.

Assent of
electors,
what deemed
to be

263. A by-law shall be deemed to have been assented to by the electors if a majority of the votes cast is in favour of the by-law.

264.—(1) Where the by-law is proposed to be passed by a county council it shall, subject to subsection 4 of section 262, be submitted, by the clerk of each town, not being a separated town, village and township within the county at the next regular election for the assent or opinion of the electors of each such municipality and the respective clerks shall upon expiry of the time for applying for a recount of the vote or, where there has been such an application, on the disposition of it by the judge, forthwith certify the result of the vote in his municipality to the clerk of the county who shall certify to the county council the number of votes cast for and against the by-law.

Procedure in case of county by-law

(2) A by-law of a county shall be deemed to have been assented to by the electors if a majority of the total of the votes cast in all the local municipalities is in favour of the by-law.

When by-law deemed to have assent

265. Ballot papers for voting on a by-law shall be in such form as may be prescribed under *The Municipal Elections Act, 1972*.

Form of ballot
1972, c. 95

14. (1) Subsection 3 of section 280 of the said Act is amended by striking out "scrutiny" in the third line and inserting in lieu thereof "recount".

s. 280 (3),
amended

(2) Subsection 4 of the said section 280 is amended by striking out "scrutiny" in the second line and inserting in lieu thereof "recount".

s. 280 (4),
amended

15. Paragraph 52 of subsection 1 of section 354 of the said Act is repealed.

s. 354 (1),
par. 52,
repealed

16. Section 472 of the said Act is repealed and the following substituted therefor:

s. 472,
re-enacted

472.—(1) No person is qualified to be elected a trustee to vote at the election thereof unless his name is entered on the polling list of electors for the office of member of council of the municipality in which the village is situate, in whole or in part, by reason of being a resident or the owner or tenant of land situate in the village or the spouse of such owner or tenant.

Qualification,
trustees and
electors

(2) The first meeting of the trustees after the election shall be held at noon on the third Monday in January, or on some day thereafter at noon.

First meeting
of trustees

17. Forms 1, 3 to 18, 22 and 24 to 27 of the said Act are repealed.

Forms,
repealed

Commence-
ment

18. This Act comes into force on a day to be named by the Lieutenant Governor by his proclamation.

Short title

19. This Act may be cited as *The Municipal Amendment Act, 1972*.